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REMARKS

The Examiner's rejection of claims 1, 4 and 5 under 35 U.S.C. 102(b) as being anticipated by Walters, U.S. Patent No. 4,014,520 is respectfully traversed. Anticipation requires that each and every element in applicant's claims be found specifically in the reference. *In re Paulsen*, 30 F.3d 1475, 31 U.S.P.Q.2d 1671, 1673 (Fed. Cir. 1994). *In re Spada*, 911 F.2d 705, 15 U.S.P.Q.2d 1655 (Fed. Cir. 1990). It is applicant's position that the Walters' reference cited by the Examiner does not have spacer plugs as described in applicant's specification and as claimed in applicant's claims 1 through 5. In order to more specifically emphasize applicant's vast improvement over the Walters' reference, applicant has amended claim 1 to more clearly distinguish the uniqueness of applicant's spacer plugs and how important the plugs are in low cost manufacture. The spacer plugs in applicant's claimed invention are not welded to the pickets and do not contain pre-cut socket holes to receive the pickets but merely slide up and abut each picket without any additional connector. The end face of each spacer plug in applicant's invention is flat and engages a flat surface by direct contact without any other connections. The simplicity of applicant's construction while remaining rigid is completely different than that shown in the Walters' reference. Since Walters shows in Figure 2 a rectangular socket 58 and mounting grooves 84 in picket 20, the construction and structure are completely different. It is believed that applicant's claim 1 as amended on its face clearly distinguishes over the Walters' reference.

The Examiner's rejection of claim 2 under 35 U.S.C. 103(a) as unpatentable over Walters in view of Grimm is respectfully traversed. Applicant herein reasserts the arguments made above with respect to the deficiencies of the Walters' reference and the spacer plugs. The Examiner states that Grimm teaches (Figures 4 and 7) spacer plugs 54 being positioned in both a top bar 24 and a bottom bar which appears to better support pickets 44. Applicant submits that the Grimm

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construction is totally and completely different than applicant's claimed invention. The pickets in Grimm are nailed in place as shown in Figure 7. The filets 54 are used to "bridge the open end of the channel with opposite sides 56 overlapping the sides 25, 26 or 35, 36 of each rail." Column 5, lines 38 through 36. They are not used to rigidly hold the pickets in place at all. It is very difficult to see how combining Walters with Grimm would remotely suggest applicant's claimed invention. In combining references under 35 U.S.C. 103, first, the combination must somehow suggest applicant's invention which, in this case, there are completely different structures involved between Walters and Grimm. Secondly, there should be some teaching or motivation to arrive at applicant's claimed invention. In Grimm, the rails are nailed in place and there is no suggestion to arrive at spacing pickets with spacer plugs as claimed in applicant's claimed invention. A suggestion, teaching or motivation to combine with prior art references is an essential evidentiary component of an obviousness holding. *Teleflex, Inc. v. Ficosa North AM. Corp.*, 272 F.3d 1313, 63 U.S.P.Q.2d 1374, 1387 (Fed. Cir. 2002).

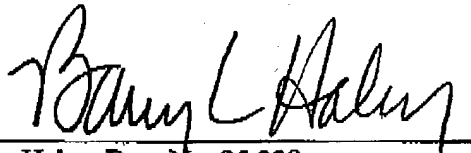
The Examiner's rejection of claim 3 under 35 U.S.C. 103(a) as unpatentable over Walters in view of Ballerstein is respectfully traversed. Ballerstein does teach that it is known in the art to connect rails to posts by welding. Again, there is no teaching or motivation to arrive at applicant's claimed invention notwithstanding the teaching in Ballerstein. Even if Ballerstein was combined with Walters, applicant's claimed invention would not result.

It is believed that the amended claim 1 and hence dependent claims 2 through 5 submitted herein by applicant clearly show on their face a structure not anticipated and unobvious and clearly allowable over the prior art.

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Respectfully submitted,



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